FOR MYSORE STATE

006—27-10-52.

Home (1949) Department.

MS SERIES.

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Letter No. 3736

Dated 16 7 1949

[Despatch Abstract.]

Processes - Service - Reciprocal arrangements between the Dominions of India and Pakistan - Government of India's letter replied to

No.F.23/47-OS.V(Pak.II)
Government of India,
Ministry of External Affairs
and Commonwealth Relations,
New Delhi, the 19th August 1948.

From
Rai Sahib P.N. Mananti, M.A.,
Deputy Secretary to the Government of India.
To

All Provincial Governments and Chief Commissioners
in India (excepting the Government of West Bengal

Arrangement on a reciprocal basis for service of Judicial processes, etc., between the Dominions of India and Pakistan.

Sir,

I am directed to say that the procedure to be adopted for the extradition of fugitive offenders from Pakistan to India and vice versa under the Fugitive Offenders' Act, 1881, is already governed by an agreement between the Government of India and Pakistan (vide this Ministry's letter No.F.23-1/47-OS.V(Pak), dated 10th March 1948, to all Provincial Governments and Chief Commissioners)

2. I am to say that no agreement has yet been reached in respect of the items noted below which are at present under discussion between the Governments of India and Pakistan. The views which the Government of India communicated to the Government of Pakistan on these items are given below, for the information of the Government of Madras/etc.:-

(a) Testimony of witnesses in criminal cases pending in the Courts of the Dominion of India and Pakistan:

The procedure relating to the securing of the testimony of a witness in one dominion for a Court in the other dominion is governed by Chapter VI of the Indian Extradition Act as adapted by the two dominions. According to this Procedure a Commission should issue from the one dominion to the other for securing the testimony of such a witness. The Government of Pakistan have been requested to draw the attention of the Courts under their jurisdiction to this procedure.

(b) Service of Summons on witnesses resident in India/Pakistan in civil suits pending in the Courts of Pakistan/India:-

Although normally summons in such cases may issue from one dominion to the other by post, a witness cannot be compelled to go to a foreign country to give evidence. The proper way of taking evidence in such cases will be by Commission.

(c) Service of Summons on Defendants resident in one Dominion in civil suits pending in the courts of the other Dominion:-

As in the case of witnesses in civil suits, summons on defendants may also issue by post, but where service cannot be effected by post the assistance of the other dominion may be sought for this purpose. In the latter case it will be necessary to issue a notification under section 29 of the Civil Procedure Code.

(d) Service of Processes on Public Servants of one dominion in civil suits pending in the courts of the other Dominion:-

Summons on a Public Servant as a defendant in

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a civil suit should be sent for service direct by the issuing court situated in one dominion to the Under Secretary to the Home Department of the Provincial Government of the other dominion so that the summons may be forwarded to the Public Servant concerned through the head of the department concerned. Necessary legislation has to be enacted to regularise this procedure. Where the Public Servant is summoned as a witness, the proper procedure will be to issue a Commission only.

(e) Realisation of Process Fees and payment of expenses of witnesses:

Process Fees, travelling expenses, daily allowances, etc. should be deposited inthe Court issuing the process. Travelling allowance and other expenses may be paid to the witness on his appearance in court and the Process Fee may be credited to the Provincial Government within whose jurisdiction the the Court is situated.

(f) Requisition of records from one Dominion by the Courts of the other Dominion:

With a view to avoiding bulk transfer of records from one dominion to the other certified copies of the records required should, as far as possible, be obtained for the use of the Court in which they are required to be produced.

3. I am to enquire whether besides the items mentioned in paragraph 2 above there are other important points relating to civil and criminal proceedings in regard to which the Government of Madras/etc., consider it desirable to have reciprocal arrangements with the Government of Pakistan. If so, I am to request that a list of such important points relating to civil and criminal proceedings which in the opinion of the Government of Madras/etc., should be covered by a reciprocal agreement between the Governments of India and Pakistan, may kindly be furnished to this Ministry at a very early date to enable the Government of India to take up such matters with the Government of Pakistan without delay. In this connection, I am to state for the information of the Government of Madras/etc., that the Government of West Bengal have urged that in the interest of expeditious disposal of judicial proceedings in both the dominions reciprocal agreements should be concluded between the two Dominions on the subject of Service of all Processes, both Civil and criminal, e.g., search warrants (Sec.96 of the Criminal Procedure Code) proclamation of persons absconding (Sec.87, Criminal Procedure Code) attachment of property of persons absconding (Sec.88 of Criminal Procedure Code) search warrants for houses suspected to contain stolen property(Sec.98 Criminal Procedure Code) search warrants for person wrongfully confined (Sec.100 Criminal Procedure Code).

Yours faithfully,

(Sd.) P.N.Mahanti
Deputy Secretary.

No.F.23/47-OS.V.(Pak.II)
Copy forwarded to the Government of West Bengal, in continuation of this Ministry's endorsement No.F.23/47-OS.V.(Pak), dated 31st May 1948, with the request that the information asked for above may kindly be furnished to this Ministry at an early date.

R.O.C.No.6249/48-B1.

From
K. N. Ganapati, Esq., B.A., Bar-at-Law,
Registrar, High Court, Madras.
To
The Secretary to Govt., Home Department, Madras.

Dated 12th March 1949.

Sir,

Processes - Arrangements on a reciprocal basis for service of Judicial processes, etc., between the Dominion of India and Pakistan.
Ref: Home Department letter No.75793 E/48-1 d/9-9-48.

The Hon'ble the Judges consider that in addition to the items mentioned in the copy of the letter of the Government of India dated 19-8-48 enclosed in your letter cited above, it is desirable to have reciprocal arrangements with the Government of Pakistan in respect of the items set out in the Annexure below.

(Sd.) M.N.Ganpati,
REGISTRAR.

Annexure.

Civil matters.

1. The jurisdiction of the Courts in India and those of Pakistan for purposes of Sections 16 to 20 C.P.C.

2. Provision to enable Commissioners and Receivers to have power to act in both the Dominions(as if all the properties to which the suit relates are situate within the territorial limits of the Court which tries the suit.

3. Provision for attachment before judgment of immovable properties under Order 38 C.P.C. and by precept under Section 46 C.P.C.

4. Execution of decrees under Section 44-A C.P.C.

5. Issue of succession certificate, probate etc., in respect of debts due to a person in one Dominion from a person resident in the other.

6. Admissibility of documents and presumption as to admissibility of copies of documents of one Dominion in the Courts of the other under Section 78(6) and 82 of the Indian Evidence Act.

7. Courts in Pakistan having jurisdiction in Insolvency to be made auxiliary to Courts in India under Section 77 of the Provincial Insolvency Act (V of 1920) and Section 126 of the Presidency Towns Insolvency Act (III of 1909).

8. Provision for realisation by the Insolvency Courts of Pakistan of assets in Pakistan belonging to insolvents adjudicated by Indian Courts.

9. The arrest of insolvents adjudicated in India residing or staying in Pakistan under a Warrant of arrest which may be issued by the Indian Courts.

0. Examination of witnesses and realisation of properties belonging to the insolvents on such examination and commissions issued for such examination under Sections 36 and 37 of the Presidency Towns Insolvency Act to be executed by the Pakistan Courts.

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11. Administration of companies in liquidation under the Indian Companies Act, 1913.

12. Provision analogous to Section 223 of the English Companies Act and Section 200 of the Indian Companies Act and Section 200 of the Indian Companies Act for enforcement and execution in Pakistan of orders passed by Courts in India with reference to the administration of companies in liquidation under the Indian Companies Act, 1913.

Criminal matters

1. Provision for execution of the warrant of arrest issued under Section 427 Crl.P.C. in Appeals under Section 417 Crl.P.C.

2. Provision for service of summons to produce documents under Section 94 Crl.P.C

3. Provision for production of prisoners to give evidence or answer a charge under the Prisoners Act (III of 1900).

4. Enforcement of Maintenance Orders beween the two Dominions.

Sd
Registrar.

R.O.C.No.3482/49-B1.

From
K.N. Ganpati Esq., B.A., Bar-at-Law,
Registrar of the High Court of Judicature, Madras.

To
The Secretary to Govt., Home Department, Madras.

Dated, Madras the 4th August 1949.

Sir,

Sub: Processes - Arrangement on a reciprocal basis for service of Judicial Processes, etc., between the Dominions of India and Pakistan.
Ref: 1. High Court's letter R.O.C.No.6249/48-B1, dated 12th March 1949.
2. Home Department letter No.75793-F/48-8, dated 3rd May 1949.

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In the annexure to High Court's letter cited above under "Civil matters" items 1 and 2 have been included with due regard to sections 16 to 20 C.P.C. Where but for the partition suits could be instituted either in the Courts of India or those of Pakistan, there should be appropriate legislation by the respective parliaments enabling such suits to be instituted in the appropriate courts of either State even after the partition.

Under Section 20 C.P.C. in cases where the cause of action arises within the jurisdiction of a Court in India and the defendant resides within the jurisdiction of a Court in ~~India and the~~ Pakistan, the suit could, but for the partition, be instituted in either of the Courts. So also under Section 16 C.P.C. in cases where the immoveable properties concerned in a suit are situate partly within the territorial jurisdiction of a Court in India and partly within that of a Court in Pakistan, the suit could, but for the partition, be instituted in either of the Courts. The Hon'ble the Judges consider it desirable that the jurisdictions of the Courts in India as well as those of Pakistan should be preserved even after partition, because it is only just and convenient that such suits should be finally disposed of at one trial either by the Courts in India or those in Pakistan. Otherwise identical issues arising out of questions relating to the genuineness, validity and construction of documents, inheritance, wills, trusts, etc. are liable to be determined separately and possibly even differently by the Courts of either terriroty. The decrees passed in such suits should be capable of execution in Courts of either State as if they were in all respects decrees passed by the Courts of the State in which execution is sought. In regard to such decrees the conditions set out in Section 13 C.P.C. should also be ruled out by legislation. The Hon'ble the Judges, however, are of opinion that, so far as the Province of Madras is concerned, cases where such problem arise are not likely to be many.

(Sd.) K.N.Ganpati,
REGISTRAR.

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GOVERNMENT OF MADRAS
Home Department.
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Lr.Ms.No.3736. Dated 16th Sept.1949.

To
The Secretary to the Govt. of India,
Ministry of External Affairs, New Delhi.
(with enclosures).

Sir,

Processes - Service - Reciprocal arrangement between the Dominions of India and Pakistan.
Ref: Mr. Mahanti's letter No.F.23/47-O.S.V.(Pak.II), dated 19th August 1948.

I am directed to forward copies of letters R.O.C.No.6249/48-B1, dated 12th March 1949 and R.O.C.No.3482/49-B1, dated 4th August 1949 from the Registrar of the High Court of Judicature, Madras, on the above subject. The Hon'ble the Judges of the High Court consider that, in addition to the items mentioned in the letter cited, it is desirable to have reciprocal arrangements with the Government of Pakistan in respect of the points relating to civil and criminal proceedings specified in their letter dated 12th March 1949. This Government agree with the Hon'ble the Judges. They, however, doubt whether the Government of Pakistan will implement the suggestion to continue the position that prevailed prior to partition by appropriate legislation. I am to say that unless the Pakistan Government are prepared to accord full reciprocity in regard to this matter, the Government cannot take any steps themselves.

Yours faithfully,

(Sd.)xxxxx,
Secretary to Govt.
12-9-49

Copy to:-
The Registrar, High Court, Madras.

/True copy/

Superintendent,
Madras Record Office.

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